

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK A. JOHANSON, JOHN RICE,
RICKEY HART, and JAMES NICHOLSON

MAILED

Appeal No. 2003-1471
Application No. 09/086,508

JAN 12 2004

ON BRIEF¹

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Before COHEN, NASE, and BAHR, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 6 and 10 through 21. Claims 25 through 28 stand allowed. These claims constitute all of the claims remaining in the application.

Appellants' invention pertains to a bone anchor and to a bone anchor for attaching tissue to a bone. A basic

¹ Attendance at the oral hearing set for Wednesday, November 19, 2003, was waived (Paper No. 32).

Appeal No. 2003-1471
Application No. 09/086,508

understanding of the invention can be derived from a reading of exemplary claims 1, 5, and 10, respective copies of which appear in the APPENDIX to the main brief (Paper No. 22).

As evidence of anticipation, the examiner has applied the document specified below:

Matuschek 4,012,984 Mar. 22, 1977

The following rejection is before us for review.

Claims 1 through 6 and 10 through 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Matuschek.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the final rejection and the answer (Paper Nos. 14 and 25), while the complete statement of appellants' argument can be found in the main and reply briefs (Paper Nos. 22 and 28).

Appeal No. 2003-1471
Application No. 09/086,508

OPINION

In reaching our conclusion on the anticipation issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the applied patent, and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We do not sustain the anticipation rejection on appeal.

Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but

Appeal No. 2003-1471
Application No. 09/086,508

only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

At the outset, we note that appellants indicate (reply brief, pages 2 and 3) that independent claims 1, 5,² and 10 all require a bone anchor having a structure in which the head of a rivet forces a washer into contact with an item (tissue) to be secured and the washer is able to float longitudinally and angularly when securing the item (tissue).³

² Claim 5, read in light of the underlying disclosure, is understood to require the head of the rivet to force the floating washer into contact with tissue to secure the floating washer to the bone, consistent with appellants' indicated understanding of the claim. For further clarity, it would be appropriate to expressly set forth in claim 5 language to the effect that the rivet head forces the floating washer into contact with tissue to secure the floating washer relative to the bone.

³ In the specification (page 9), appellants explain that when the washer 7 floats it means that it is capable of at least longitudinal motion and limited angular motion relative to expandable sleeve 4.

Appeal No. 2003-1471
Application No. 09/086,508

A review of the Matuschek reference reveals to us that appellants' independent claims 1, 5, and 10, in particular, are not anticipated thereby, i.e., appellants' claims do not read on the blind rivet assembly of the reference.

Simply stated, the structure of the blind rivet stem assembly of Matuschek (Figs. 1, 2, and 4), with its pressure washer 13 engaging pressure element 11 of a tool and rivet head 2 (to bulge locking collar 21), does not respond to the claimed bone anchor structure which functions to provide for the head of a rivet to force a floating washer into contact with tissue adjacent to a bone and secure the floating washer relative to the bone (washer sandwiched between tissue and head of the rivet). For the foregoing reasons, appellants' independent claims 1, 5, and 10 are not anticipated by the Matuschek patent and the rejection under 35 U.S.C. § 102(b) cannot be sustained.

Appeal No. 2003-1471
Application No. 09/086,508

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

Jennifer D. Bahr
JENNIFER D. BAHR
Administrative Patent Judge

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Appeal No. 2003-1471
Application No. 09/086,508

NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604